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BEYER WEAVER LLP
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FEB 02 2007

In re Application of
David Dolson et al.
Application No. 09/905,600
Filed: July 13, 2001
Attorney Docket No: CISCP250/4099

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition to withdraw the holding of abandonment, filed November 30, 2005, under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513. Alternatively, petitioners seek to revive the abandoned application under 1.137(b).¹

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED** as involving moot issues.

This application became abandoned on March 25, 2005, for failure to file a timely response to the Notice of Non-Compliant Amendment mailed February 25, 2005, which set a one (1) month statutory period for reply. Accordingly, a Notice of Abandonment was mailed November 16, 2005. Petitioner asserts that the office communication mailed February 25, 2005 was never received.

The file record does not disclose that an office communication was actually mailed to the address of record on February 25, 2005. Additionally, petitioner has provided a copy of the docket report, wherein receipt of the office communication purportedly mailed February 25, 2005 would have been filed, had it been received.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

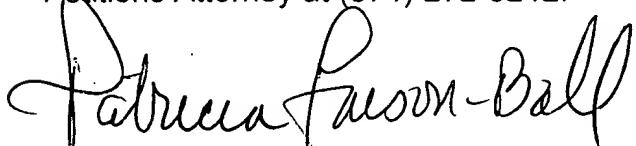
(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry indicating receipt of the office communication dated February 25, 2005, it is apparent that it was not received. The evidence submitted corroborates non-receipt of the office communication.

In view of the facts set forth in the petition, it is concluded that the office communication dated February 25, 2005 was never received at the address of record. Accordingly, the holding of abandonment is hereby withdrawn. No petition fee is necessary and none has been charged. In view thereof, there is no need to treat the petition in the alternative under the unintentional standard.

This matter will be referred to Technology Center 2613 for appropriate action on the response filed November 30, 2005 with the instant petition.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions